



Miami-Dade County Board of County Commissioners

Office of the Commission Auditor

Supplemental Legislative Analysis

Board of County Commissioners

Tuesday, April 25, 2006

9:30 AM

Commission Chamber

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Commission Auditor

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**Miami-Dade County Board of County Commissioners
Office of the Commission Auditor**

Supplemental Legislative Analysis

**Board of County Commissioners
Meeting Agenda**

Tuesday, April 25, 2006

Written analyses for the below listed items are attached for your consideration in this Legislative Analysis.

Item Number(s)

4(L)	8(R)(1)(B)
12(A)(5)	8(O)(1)(F) Additional Information

If you require further analysis of these or any other agenda items, please contact Guillermo Cuadra, Chief Legislative Analyst, at (305) 375-5469.

Acknowledgements -- Analyses prepared by:

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LEGISLATIVE ANALYSIS

ORDINANCE STANDARDIZING RESOURCE ALLOCATION AND RESERVE PROCEDURES TO BE FOLLOWED IN THE PREPARATION AND ADOPTION OF THE COUNTY'S ANNUAL BUDGET; REQUIRING BUDGET FORMAT TO PROVIDE CLEAR BASES ON WHICH TO HOLD MANAGEMENT ACCOUNTABLE FOR OPERATING WITHIN ADOPTED BUDGET; REPEALING SECTIONS 2-11.22, 2-11.24.1, AND 2-11.25 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, AND TRANSFERRING THEIR PROVISIONS TO NEW SECTION 2-1799; REPEALING SECTION 2-11.31 AND TRANSFERRING ITS PROVISIONS TO SECTION 2-1795; AMENDING SECTIONS 2-1795 AND 2-1796; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, CIVIL PENALTY AND AN EFFECTIVE DATE

Commissioner Carlos A. Gimenez

I. SUMMARY

This proposed ordinance:

- Transfers existing provisions related to the countywide and UMSA contingency reserve funds to Article CXIII.5 Governing for Results (§ 2-1799)
- Amends requirements for use of countywide, UMSA, fire district emergency contingency reserves and countywide contingency reserves (§ 2-1799):
 - Codifying emergency contingency reserves
 - Emergency contingency reserves only to be utilized for emergencies such as natural disasters and civil disturbances
 - Requiring approval by the Internal Management and Fiscal Responsibility Committee in addition to County Manager and 2/3 of BCC members in office to utilize emergency contingency reserves
 - Contingency reserve funds use expanded to include unexpected revenue reductions or extraordinary demands on County operations that cannot be absorbed through historical methods
- Requires departmental appropriations to be specified by given line items (§ 2-1795)
- Institutes a professional revenue estimating and naming required participants (§ 2-1795)
- Prohibits expenditures for any line item to exceed amount appropriated for in such line item (includes civil penalty for violations of this section) (§ 2-1796)

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- Provides the County Manager authority to make intradepartmental budget amendments reallocating appropriations amongst a department's line item in an amount not to exceed 10% (§ 2-1796)
- Requires ratification by the BCC of intradepartmental budget amendments reallocating appropriations amongst a department's line item in an amount exceeding 10% (§ 2-1796)
- Provides for the disposition of unallocated carryover in the countywide and UMSA general funds as follows (§ 2-1799):
 - 50% to capital outlay reserve
 - 50% as profit sharing to departments that generated additional revenue at the discretion of the County Manager

II. PRESENT SITUATION

On July 7, 2005, the Board adopted Ordinance 05-136, thus establishing a “Governing for Results” framework in order to improve service delivery, managerial and Legislative decision making, and public trust in county government.

Ordinance 05-136 created Section 2-1792 of the Code, and it reads as follows:

Sec. 2-1792. Legislative Findings and Purpose.

- (a) Miami-Dade County has an interest in improving the delivery of public services through the use of strategic planning, business planning, a sound resource allocation process encompassing the traditional budget process and a framework for managerial accountability.
- (b) The County Commission finds that the use of performance measures and standards in the planning and resource allocation processes, as well as the public reporting of performance information, will result in a more efficient and effective utilization of County resources and improved results for the public.
- (c) The purpose of this article is to:
 - 1. Improve public service delivery through deliberate planning and an emphasis on accountability and results;
 - 2. Improve managerial and legislative decision-making by gathering meaningful and objective performance information; and
 - 3. Improve public trust in County government by holding the County and its departments accountable for achieving results. (emphasis added)

III. POLICY CHANGE AND IMPLICATION

Provisions instituting additional budgetary controls is consistent with the Board's policy to improve managerial accountability and public trust in county government.

IV. ECONOMIC IMPACT

None.

V. COMMENTS AND QUESTIONS

BUDGET CONTROLS

The State of Florida has budgetary controls codified in Chapter 216, Florida Statutes. See §§ 216.023, 216.221, 216.292 and 216.311 (below).

216.311 Unauthorized contracts in excess of appropriations; penalty.--

(1) No agency or branch of state government shall contract to spend, or enter into any agreement to spend, any moneys in excess of the amount appropriated to such agency or branch unless specifically authorized by law, and any contract or agreement in violation of this chapter shall be null and void.

(2) Any person who willfully contracts to spend, or enters into an agreement to spend, any money in excess of the amount appropriated to the agency or branch for whom the contract or agreement is executed is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

In 1996, the State of Florida established an Emergency Financial Oversight Board to assist the City of Miami during its financial crisis. Said board assisted city in the development of budgetary controls that in many respects mirror the State's planning and budgeting methods. The City of Miami adopted ordinance 11727 known as the Anti-Deficiency Act. See §§ 18-502, 18-503 (below), and 18-542.

Sec. 18-503. Violations of act; penalties.

- (1) A duly adopted ordinance or resolution shall provide obligational authority and if enacted will not constitute a violation of this act.
- (2) No provision contained in this section shall be construed to violate fair labor laws or any provision of the current, approved union contracts, or any other legally binding issues which have been the subject of collective bargaining.

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- (3) Effective January 1, 2000, the violation of any provisions of this act shall constitute a civil offense and be punishable by civil penalty in an amount not to exceed \$500.00, in a court of competent jurisdiction. Without regard to culpability, violation of this law may serve as one element of a basis for employment termination.

-O-

Should there be a specific restriction on using grant funds for recurring personnel costs?

LEGISLATIVE ANALYSIS

***INTERIM WATER USE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE
SOUTH FLORIDA WATER MANAGEMENT DISTRICT***

Water and Sewer Department

I. SUMMARY

This Resolution authorizes the execution of an interim water use agreement (agreement) between Miami-Dade County's Water and Sewer Department (MDWASD) and the South Florida Water Management District (SFWMD).

II. PRESENT SITUATION

- Miami-Dade County's Water and Sewer Department currently operates the Hialeah-Preston Water Treatment, the Alexander Orr Water Treatment Plant and the South-Miami Dade Water Supply System consisting of 5 smaller additional auxiliary treatment water plants. MDWSD also operates three regional wastewater treatment facilities (North District Wastewater Treatment Plant, Central District Wastewater Treatment Plant, and South District Wastewater Treatment Plant.)
- MDWASD's current operations consist of a total of 88 water supply wells grouped into 14 wellfields that withdraw water from the Biscayne Aquifer.
- Under Florida State Law, SFWMD has allowed MDWASD the withdrawal of groundwater through the issuance of Consumption Use Permit (CUP).
- In 1995, 1999, and 2003, the SFWMD issued three separate CUP's to MDWSD. (see table on following page)
- On May 7, 2004 MDWASD submitted a preliminary application to request the consolidation of the three existing Consumption Use Permits. MDWASD's application requested water supply from the Biscayne Aquifer and associated Floridian Aquifer Storage and Recovery (ASR) wells, to meet the projected demands for the next 20 years. MDWASD requested a water withdrawal of 450 MGD to meet the projected demands until 2025.
- Since the filing of the consolidated permit application, MDWASD and SFWMD have corresponded with one another on several occasions. The agencies have met and exchanged several requests for additional information in trying to negotiate a long term permit for the County that incorporate means for more efficient water use (alternative water supply projects, reuse projects,

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etc.). MDWASD's recent permit application with SFWMD is currently pending.

<i>MDWASD Water Treatment Plant(s)</i>	<i>Date of last permit</i>	<i>Permit's Annual Allocation</i>	<i>Volume of water produced in 2005</i>
Alexander Orr The Alexander Orr Water Supply Treatment Facility includes Alexander Orr, Snapper Creek, Southwest, and West wellfields.	May 11, 1995	74,136 MGY (203 MGD)	64,587 MGY (177 MGD)
Hialeah-Preston The Hialeah-Preston Water Supply Treatment Facility includes Hialeah, Preston, Miami Springs, and Northwest wellfields.	February 11, 1999	72,703 MGY (199 MGD)	59,354 MGY (163 MGD)
South Dade Water The South Dade Water Supply System includes the Everglades Labor Camp Elevated Tank, Leisure City, Newton, and Naranja, Water Treatment Plans, their associated wellfields, and the future South Miami Heights Water Treatment Plant (SMHWTP)	March 13, 2003	3,997 MGY (11 MGD)	2,570 MGY (7 MGD)

(As of 2005, SFWMD authorized MDWASD the withdrawal of 347.00 Million Gallons per Day (MGD). MDSWD treated approximately 295 MGD of wastewater in 2005 and reclaimed 16 MGD of treated wastewater for beneficial reuse.)

III. POLICY IMPLICATIONS

- Through the work of MDWASD and SFWMD the following proposal for an interim water use agreement between the two agencies has been brought forth to allow more time and opportunity to address certain areas of concern before considering a long term permit.
- This agreement will provide MDWASD eighteen (18) months to submit additional information in response to SFWMD requests. The agreement will also allow sufficient time to commence studies, evaluations, and other obligations necessary in determining whether MDWASD has provided reasonable assurances and precedent conditions for the pending 20 year CUP they have requested.

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- MDWASD and SFWMD have agreed to address certain areas of concern in this agreement. SFWMD will be working very closely to monitor and evaluate MDWASD performance in complying with the agreement's provisions and MDWASD's ability to provide deliverables as scheduled.
- This *Interim Water Use Agreement* provides that MDWASD will address concerns regarding:
 - ❑ Unaccounted for Water Losses
 - ❑ Water Use Accounting
 - ❑ 20-year Water Conservation Plan (provided in 5-year increments)
{ See BCC Item 11A16: MDWASD Water Use Efficiency Five Year Plan--- Sponsored by Chairman Joe Martinez }
 - ❑ Four Party Agreement for Requesting Increase at the West Wellfield
 - ❑ Isolated Wetland Identification and Impact Evaluation
 - ❑ Revised Water Demand Numbers
 - ❑ Wellfield Operational Plan
 - ❑ Monitoring Network Design
 - ❑ 20-year Alternative Water Supply Plan
 - ❑ Quarterly Status Reports (to SFWMD)
 - ❑ Response to December 1, 2005: Request for Additional Information
 - ❑ 2 Pilot Reuse/Wastewater Treatment Projects (approx. \$13.2 million)
- The agencies have agreed to meet at least every 90 days to discuss any outstanding issues, work progress, and the timetable for completion of deliverables. At that time MDWASD shall submit a detailed report addressing the work that has completed and the anticipated work for the next 90 days, any setbacks or schedule concerns.
- Within the agreement, SFWMD has agreed to authorize a withdrawal increase of 2.76 MGD for a new system-wide withdrawal of 349.76 MGD. The new withdrawal has been granted by SFWMD to account for the projected growth of demand within Miami-Dade County during the 18-month period.

IV. ECONOMIC IMPACT

- The terms of this interim water use agreement require MDWASD to expend close to \$200,000 during the eighteen (18) month period to study and fulfill the prerequisites for the pending 20-year consumption use permit with SFWMD.
- The agreement also provides that MDWASD will design, construct, and fund two pilot projects worth \$13 million, to demonstrate the feasibility of using treatment wastewater to re-hydrate coastal wetlands and aquifer recharge.

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V. COMMENTS AND QUESTIONS

- How does MDWASD plan to take on their new obligations and pay for the new expenditures associated with complying with this Interim Water Use Agreement with SFWMD?

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LEGISLATIVE ANALYSIS

RESOLUTION APPROVING AMENDMENT NUMBER FIVE TO THE AMENDED AND RESTATED OPERATING MANAGEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE PERFORMING ARTS CENTER TRUST, INC. AND APPROVING AMENDMENT NUMBER FIVE TO AMENDED AND RESTATED COOPERATION AGREEMENT BETWEEN PERFORMING ARTS CENTER FOUNDATION AND THE PERFORMING ARTS CENTER TRUST INC., AUTHORIZING THE COUNTY MANAGER TO EXECUTE SAME AND TO EXERCISE CANCELLATION PROVISIONS CONTAINED THEREIN AND WAIVING THE REQUIREMENTS OF RESOLUTION NO. R-130-06 AND RESOLUTION NO. R-377-04 [SEE ORIGINAL ITEM UNDER FILE NOS. 060625 AND 060831]

County Manager

I. SUMMARY

The proposed resolution amends the Operating Management Agreement between Miami-Dade (MDC) and the Performing Arts Center Trust (PACT), and the Cooperation Agreement between the Performing Arts Center Foundation (Foundation) and the PACT allowing for:

1. an extension on the County's receipt date for the one time payment (see Resolution R-1409-00 below) of \$20 million for design and construction;
2. PACT's commitment of \$5 million in escrow to be paid to the County 20 days after approval of proposed resolution; and
3. a twenty years extension (until March 1, 2026) in order for the PACT to fulfill an additional commitment of \$30 million to assist in the funding of the Acceleration/Recovery Plan over the next 20 years (payment of \$1.5 million per year).

Furthermore, the proposed resolution waives the requirements of Resolution Nos. R-130-06 and R-377-04 and provides for changes within the Articles of Incorporation Operating Policies and Bylaws that would provide greater independence to the PACT.

II. PRESENT SITUATION

DATE	RESOLUTION	ACTION TAKEN
Mar. 18, 2004	R-377-04	<ul style="list-style-type: none">• Approved contracts do not become effective until expiration of the reconsideration period
Oct. 18, 2005	R-1198-05	<ul style="list-style-type: none">• Requires that all 3rd party contracts be completely negotiated, in final form and executed by all non-county parties prior to being placed on the agenda.
Jan. 24, 2006	R-130-06	<ul style="list-style-type: none">• Amended Resolution no. R-1198-05 in order to clarify intent.

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What follows is a summary of prior amendments:

DATE	RESOLUTION	ACTION TAKEN
July 13, 1993	R-860-93	<ul style="list-style-type: none">• Operating Management Agreement between MDC and PACT approved
Mar. 21, 1996	R-279-96	<ul style="list-style-type: none">• Operating Management Agreement - Amendment No. 1<ul style="list-style-type: none">○ Three year extension○ Private contributions for design & construction amended \$19.0 million to \$22.2 million• Cooperation Agreement between the PACT and the Foundation introduced
Dec. 19, 2000	R-1409-00	<ul style="list-style-type: none">• Operating Management Agreement – Amendment No. 2<ul style="list-style-type: none">○ Private contributions for design and construction from 22.2 million to 422.2 million○ Updated timetables for conveyance of monies• Cooperation Agreement<ul style="list-style-type: none">○ Amended language○ Obligated the Foundation to fulfill the increased funding requirement contained in the Operating Management Agreement
Jan. 23, 2003	R-099-03	<ul style="list-style-type: none">• Operating Management Agreement – Amendment No. 3<ul style="list-style-type: none">○ Private contributions for construction from \$42.2 million to \$44.594 million to fund enhancements (owner scope additions)
July 27, 2004	R-1018-04	<ul style="list-style-type: none">• Operating Management Agreement – Amendment No. 4<ul style="list-style-type: none">○ Two year extension from Sept. 30, 2003 to Sept 30, 2005 for the PACT to deliver the final installment of construction funding (\$20 million)

III. POLICY CHANGE AND IMPLICATION

The PACT has direct fiduciary responsibility for the operation and programming of the PAC. The proposed resolution would amend the Articles of Incorporation in the following manner:

- Changes in titles,
- Increase community at large representation on the PACT board from 7 to 15,
- Changes in the nomination process.

The proposed changes in the nomination process seem to cause the most concerns and/or confusion. With the proposed increases in the community at large representation the amendments to the nomination process are suggestive that the BCC would be relinquishing appointment controls to the PACT; however, according to staff, the proposed amendments are no different than what is already in place.

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The proposed resolution also amends the Operating Management Agreement between MDC and the PACT, and the Cooperation Agreement between the Foundation and the PACT so that prior funding commitments can be met.

IV. ECONOMIC IMPACT

The proposed resolution changes the distribution date of funds from the PACT to the County.

V. COMMENTS AND QUESTIONS

The PACT is requesting greater flexibility by having more influence in the appointment of board members, specifically appointments for community representation. Of the 95 County Boards, 34 have BCC appointments.

BCC has the option of changing the procedure utilized to appoint members to the PACT's board of directors.

ADDITIONAL INFORMATION

<u>Item#</u>	<u>Subject Matter</u>	<u>Comments/Questions</u>
801F	Waiver of Formal Bid Procedures	<ul style="list-style-type: none">• BCC to waive competitive bidding and award a \$1,892,570 contract to Pitney & Bowes Inc. for a five year lease of a Reliavote System <u>Mail Balloting System</u> and waive the time period for BCC motion for consideration to allow equipment installed, tested and ready by July 2006 for the August 2006 upcoming elections• Currently, Elections hires 200 + “seasonals” to manually stuff the absentee ballot envelopes for a two-month period which only covers the mailing aspect of the entire absentee ballot process that involves tracking and authenticating• Reliavote system promises to cut the mailing aspect of the process by 50% (one month) plus provide tracking, verifying (recoverable audit trail) and authenticating (prevent voter fraud)• To date, the Pitney & Bowes Reliavote system is the only vendor that carries the mailing, tracking and authenticating mail balloting technology• Prior to this request for the Reliavote system, the County (thru a 12/2005 BCC approved request) tried to access the State of Florida contract for \$1.86 million to purchase individually the components necessary for absentee ballot automation (mailing, tracking and authenticating) but it was determined that critical components, such as technical support, programming, system maintenance, testing, assembly and installation services were not made available thru the State contract.• <u>Three other counties in Florida currently used this system which include: Broward, Lee and Collier</u>

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<u>Item#</u>	<u>Subject Matter</u>	<u>Comments/Questions</u>
		<ul style="list-style-type: none">• <u>Questions:</u> Since technology, especially software, updates and/or modernizes from year to year, is (5) five years too long of a time period to be “locked-in” to this particular technology? Does the County have the ability, under the contract, to avail itself of the best technology available?